

By: Senator(s) Harden

To: Education;  
Appropriations

SENATE BILL NO. 2595

1 AN ACT TO AMEND SECTION 37-15-9, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT CHILDREN WHO HAVE REACHED THEIR 5TH OR 6TH BIRTHDAY  
3 ON OR BEFORE AUGUST 1 SHALL BE ELIGIBLE TO ENROLL IN PUBLIC  
4 KINDERGARTEN OR FIRST GRADE; TO AMEND SECTION 37-13-91, TO CONFORM  
5 SAID ENROLLMENT REQUIREMENTS TO THE PROVISIONS OF THE COMPULSORY  
6 SCHOOL LAW; AND FOR RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 **SECTION 1.** Section 37-15-9, Mississippi Code of 1972, is  
9 amended as follows:

10 37-15-9. (1) Except as provided in subsection (2) and  
11 subject to the provisions of subsection (3) of this section, no  
12 child shall be enrolled or admitted to any kindergarten which is a  
13 part of the free public school system during any school year  
14 unless such child will reach his fifth birthday on or before  
15 August 1 of said school year, and no child shall be enrolled or  
16 admitted to the first grade in any school which is a part of the  
17 free public school system during any school year unless such child  
18 will reach his sixth birthday on or before August 1 of said school  
19 year. No pupil shall be permanently enrolled in a school in the  
20 State of Mississippi who formerly was enrolled in another public  
21 or private school within the state until the cumulative record of  
22 the pupil shall have been received from the school from which he  
23 transferred. Should such record have become lost or destroyed,  
24 then it shall be the duty of the superintendent or principal of  
25 the school where the pupil last attended school to initiate a new  
26 record.

27 (2) Subject to the provisions of subsection (3) of this  
28 section, any child who transfers from an out-of-state public or  
29 private school in which that state's law provides for a

30 first-grade or kindergarten enrollment date subsequent to August  
31 1, shall be allowed to enroll in the public schools of  
32 Mississippi, at the same grade level as their prior out-of-state  
33 enrollment, if:

34 (a) The parent, legal guardian or custodian of such  
35 child was a legal resident of the state from which the child is  
36 transferring;

37 (b) The out-of-state school from which the child is  
38 transferring is duly accredited by that state's appropriate  
39 accrediting authority;

40 (c) Such child was legally enrolled in a public or  
41 private school for a minimum of four (4) weeks in the previous  
42 state; and

43 (d) The superintendent of schools in the applicable  
44 Mississippi school district has determined that the child was  
45 making satisfactory educational progress in the previous state.

46 (3) When any child applies for admission or enrollment in  
47 any public school in the state, the parent, guardian or child, in  
48 the absence of an accompanying parent or guardian, shall indicate  
49 on the school registration form if the enrolling child has been  
50 expelled from any public or private school or is currently a party  
51 to an expulsion proceeding. If it is determined from the child's  
52 cumulative record or application for admission or enrollment that  
53 the child has been expelled, the school district may deny the  
54 student admission and enrollment until the superintendent of the  
55 school, or his designee, has reviewed the child's cumulative  
56 record and determined that the child has participated in  
57 successful rehabilitative efforts including, but not limited to,  
58 progress in an alternative school or similar program. If the  
59 child is a party to an expulsion proceeding, the child may be  
60 admitted to a public school pending final disposition of the  
61 expulsion proceeding. If the expulsion proceeding results in the  
62 expulsion of the child, the public school may revoke such

63 admission to school. If the child was expelled or is a party to  
64 an expulsion proceeding for an act involving violence, weapons,  
65 alcohol, illegal drugs or other activity that may result in  
66 expulsion, the school district shall not be required to grant  
67 admission or enrollment to the child before one (1) calendar year  
68 after the date of the expulsion.

69 **SECTION 2.** Section 37-13-91, Mississippi Code of 1972, is  
70 amended as follows:

71 37-13-91. (1) This section shall be referred to as the  
72 "Mississippi Compulsory School Attendance Law."

73 (2) The following terms as used in this section are defined  
74 as follows:

75 (a) "Parent" means the father or mother to whom a child  
76 has been born, or the father or mother by whom a child has been  
77 legally adopted.

78 (b) "Guardian" means a guardian of the person of a  
79 child, other than a parent, who is legally appointed by a court of  
80 competent jurisdiction.

81 (c) "Custodian" means any person having the present  
82 care or custody of a child, other than a parent or guardian of the  
83 child.

84 (d) "School day" means not less than five (5) and not  
85 more than eight (8) hours of actual teaching in which both  
86 teachers and pupils are in regular attendance for scheduled  
87 schoolwork.

88 (e) "School" means any public school in this state or  
89 any nonpublic school in this state which is in session each school  
90 year for at least one hundred eighty (180) school days, except  
91 that the "nonpublic" school term shall be the number of days that  
92 each school shall require for promotion from grade to grade.

93 (f) "Compulsory-school-age child" means a child who has  
94 attained or will attain the age of six (6) years on or before  
95 August 1 of the calendar year and who has not attained the age of

96 seventeen (17) years on or before August 1 of the calendar year;  
97 and shall include any child who has attained or will attain the  
98 age of five (5) years on or before August 1 and has enrolled in a  
99 full-day public school kindergarten program. Provided, however,  
100 that the parent or guardian of any child enrolled in a full-day  
101 public school kindergarten program shall be allowed to disenroll  
102 the child from the program on a one-time basis, and such child  
103 shall not be deemed a compulsory-school-age child until the child  
104 attains the age of six (6) years.

105 (g) "School attendance officer" means a person employed  
106 by the State Department of Education pursuant to Section 37-13-89.

107 (h) "Appropriate school official" means the  
108 superintendent of the school district, or his designee, or, in the  
109 case of a nonpublic school, the principal or the headmaster.

110 (i) "Nonpublic school" means an institution for the  
111 teaching of children, consisting of a physical plant, whether  
112 owned or leased, including a home, instructional staff members and  
113 students, and which is in session each school year. This  
114 definition shall include, but not be limited to, private, church,  
115 parochial and home instruction programs.

116 (3) A parent, guardian or custodian of a  
117 compulsory-school-age child in this state shall cause the child to  
118 enroll in and attend a public school or legitimate nonpublic  
119 school for the period of time that the child is of compulsory  
120 school age, except under the following circumstances:

121 (a) When a compulsory-school-age child is physically,  
122 mentally or emotionally incapable of attending school as  
123 determined by the appropriate school official based upon  
124 sufficient medical documentation.

125 (b) When a compulsory-school-age child is enrolled in  
126 and pursuing a course of special education, remedial education or  
127 education for handicapped or physically or mentally disadvantaged  
128 children.

129           (c) When a compulsory-school-age child is being  
130 educated in a legitimate home instruction program.

131           The parent, guardian or custodian of a compulsory-school-age  
132 child described in this subsection, or the parent, guardian or  
133 custodian of a compulsory-school-age child attending any nonpublic  
134 school, or the appropriate school official for any or all children  
135 attending a nonpublic school shall complete a "certificate of  
136 enrollment" in order to facilitate the administration of this  
137 section.

138           The form of the certificate of enrollment shall be prepared  
139 by the Office of Compulsory School Attendance Enforcement of the  
140 State Department of Education and shall be designed to obtain the  
141 following information only:

142                   (i) The name, address, telephone number and date  
143 of birth of the compulsory-school-age child;

144                   (ii) The name, address and telephone number of the  
145 parent, guardian or custodian of the compulsory-school-age child;

146                   (iii) A simple description of the type of  
147 education the compulsory-school-age child is receiving and, if the  
148 child is enrolled in a nonpublic school, the name and address of  
149 the school; and

150                   (iv) The signature of the parent, guardian or  
151 custodian of the compulsory-school-age child or, for any or all  
152 compulsory-school-age child or children attending a nonpublic  
153 school, the signature of the appropriate school official and the  
154 date signed.

155           The certificate of enrollment shall be returned to the school  
156 attendance officer where the child resides on or before September  
157 15 of each year. Any parent, guardian or custodian found by the  
158 school attendance officer to be in noncompliance with this section  
159 shall comply, after written notice of the noncompliance by the  
160 school attendance officer, with this subsection within ten (10)  
161 days after the notice or be in violation of this section.

162 However, in the event the child has been enrolled in a public  
163 school within fifteen (15) calendar days after the first day of  
164 the school year as required in subsection (6), the parent or  
165 custodian may, at a later date, enroll the child in a legitimate  
166 nonpublic school or legitimate home instruction program and send  
167 the certificate of enrollment to the school attendance officer and  
168 be in compliance with this subsection.

169 For the purposes of this subsection, a legitimate nonpublic  
170 school or legitimate home instruction program shall be those not  
171 operated or instituted for the purpose of avoiding or  
172 circumventing the compulsory attendance law.

173 (4) An "unlawful absence" is an absence during a school day  
174 by a compulsory-school-age child, which absence is not due to a  
175 valid excuse for temporary nonattendance. Days missed from school  
176 due to disciplinary suspension shall not be considered an  
177 "excused" absence under this section. This subsection shall not  
178 apply to children enrolled in a nonpublic school.

179 Each of the following shall constitute a valid excuse for  
180 temporary nonattendance of a compulsory-school-age child enrolled  
181 in a public school, provided satisfactory evidence of the excuse  
182 is provided to the superintendent of the school district, or his  
183 designee:

184 (a) An absence is excused when the absence results from  
185 the compulsory-school-age child's attendance at an authorized  
186 school activity with the prior approval of the superintendent of  
187 the school district, or his designee. These activities may  
188 include field trips, athletic contests, student conventions,  
189 musical festivals and any similar activity.

190 (b) An absence is excused when the absence results from  
191 illness or injury which prevents the compulsory-school-age child  
192 from being physically able to attend school.

193 (c) An absence is excused when isolation of a  
194 compulsory-school-age child is ordered by the county health

195 officer, by the State Board of Health or appropriate school  
196 official.

197 (d) An absence is excused when it results from the  
198 death or serious illness of a member of the immediate family of a  
199 compulsory-school-age child. The immediate family members of a  
200 compulsory-school-age child shall include children, spouse,  
201 grandparents, parents, brothers and sisters, including  
202 stepbrothers and stepsisters.

203 (e) An absence is excused when it results from a  
204 medical or dental appointment of a compulsory-school-age child  
205 where an approval of the superintendent of the school district, or  
206 his designee, is gained before the absence, except in the case of  
207 emergency.

208 (f) An absence is excused when it results from the  
209 attendance of a compulsory-school-age child at the proceedings of  
210 a court or an administrative tribunal if the child is a party to  
211 the action or under subpoena as a witness.

212 (g) An absence may be excused if the religion to which  
213 the compulsory-school-age child or the child's parents adheres,  
214 requires or suggests the observance of a religious event. The  
215 approval of the absence is within the discretion of the  
216 superintendent of the school district, or his designee, but  
217 approval should be granted unless the religion's observance is of  
218 such duration as to interfere with the education of the child.

219 (h) An absence may be excused when it is demonstrated  
220 to the satisfaction of the superintendent of the school district,  
221 or his designee, that the purpose of the absence is to take  
222 advantage of a valid educational opportunity such as travel,  
223 including vacations or other family travel. Approval of the  
224 absence must be gained from the superintendent of the school  
225 district, or his designee, before the absence, but the approval  
226 shall not be unreasonably withheld.

227           (i) An absence may be excused when it is demonstrated  
228 to the satisfaction of the superintendent of the school district,  
229 or his designee, that conditions are sufficient to warrant the  
230 compulsory-school-age child's nonattendance. However, no absences  
231 shall be excused by the school district superintendent, or his  
232 designee, when any student suspensions or expulsions circumvent  
233 the intent and spirit of the compulsory attendance law.

234           (5) Any parent, guardian or custodian of a  
235 compulsory-school-age child subject to this section who refuses or  
236 willfully fails to perform any of the duties imposed upon him or  
237 her under this section or who intentionally falsifies any  
238 information required to be contained in a certificate of  
239 enrollment, shall be guilty of contributing to the neglect of a  
240 child and, upon conviction, shall be punished in accordance with  
241 Section 97-5-39.

242           Upon prosecution of a parent, guardian or custodian of a  
243 compulsory-school-age child for violation of this section, the  
244 presentation of evidence by the prosecutor that shows that the  
245 child has not been enrolled in school within eighteen (18)  
246 calendar days after the first day of the school year of the public  
247 school which the child is eligible to attend, or that the child  
248 has accumulated twelve (12) unlawful absences during the school  
249 year at the public school in which the child has been enrolled,  
250 shall establish a prima facie case that the child's parent,  
251 guardian or custodian is responsible for the absences and has  
252 refused or willfully failed to perform the duties imposed upon him  
253 or her under this section. However, no proceedings under this  
254 section shall be brought against a parent, guardian or custodian  
255 of a compulsory-school-age child unless the school attendance  
256 officer has contacted promptly the home of the child and has  
257 provided written notice to the parent, guardian or custodian of  
258 the requirement for the child's enrollment or attendance.



259           (6) If a compulsory-school-age child has not been enrolled  
260 in a school within fifteen (15) calendar days after the first day  
261 of the school year of the school which the child is eligible to  
262 attend or the child has accumulated five (5) unlawful absences  
263 during the school year of the public school in which the child is  
264 enrolled, the school district superintendent shall report, within  
265 two (2) school days or within five (5) calendar days, whichever is  
266 less, the absences to the school attendance officer. The State  
267 Department of Education shall prescribe a uniform method for  
268 schools to utilize in reporting the unlawful absences to the  
269 school attendance officer. The superintendent, or his designee,  
270 also shall report any student suspensions or student expulsions to  
271 the school attendance officer when they occur.

272           (7) When a school attendance officer has made all attempts  
273 to secure enrollment and/or attendance of a compulsory-school-age  
274 child and is unable to effect the enrollment and/or attendance,  
275 the attendance officer shall file a petition with the youth court  
276 under Section 43-21-451 or shall file a petition in a court of  
277 competent jurisdiction as it pertains to parent or child.  
278 Sheriffs, deputy sheriffs and municipal law enforcement officers  
279 shall be fully authorized to investigate all cases of  
280 nonattendance and unlawful absences by compulsory-school-age  
281 children, and shall be authorized to file a petition with the  
282 youth court under Section 43-21-451 or file a petition or  
283 information in the court of competent jurisdiction as it pertains  
284 to parent or child for violation of this section. The youth court  
285 shall expedite a hearing to make an appropriate adjudication and a  
286 disposition to ensure compliance with the Compulsory School  
287 Attendance Law, and may order the child to enroll or re-enroll in  
288 school. The superintendent of the school district to which the  
289 child is ordered may assign, in his discretion, the child to the  
290 alternative school program of the school established pursuant to  
291 Section 37-13-92.

292           (8) The State Board of Education shall adopt rules and  
293 regulations for the purpose of reprimanding any school  
294 superintendents who fail to timely report unexcused absences under  
295 the provisions of this section.

296           (9) Notwithstanding any provision or implication herein to  
297 the contrary, it is not the intention of this section to impair  
298 the primary right and the obligation of the parent or parents, or  
299 person or persons in loco parent is to a child, to choose the  
300 proper education and training for such child, and nothing in this  
301 section shall ever be construed to grant, by implication or  
302 otherwise, to the State of Mississippi, any of its officers,  
303 agencies or subdivisions any right or authority to control,  
304 manage, supervise or make any suggestion as to the control,  
305 management or supervision of any private or parochial school or  
306 institution for the education or training of children, of any kind  
307 whatsoever that is not a public school according to the laws of  
308 this state; and this section shall never be construed so as to  
309 grant, by implication or otherwise, any right or authority to any  
310 state agency or other entity to control, manage, supervise,  
311 provide for or affect the operation, management, program,  
312 curriculum, admissions policy or discipline of any such school or  
313 home instruction program.

314           **SECTION 3.** This act shall take effect and be in force from  
315 and after July 1, 2004.